IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 2ND JULY 2007 / 11TH ASHADHA 1929

Crl.Rev.Pet.No. 2549 of 2007()

CRA.291/2006 of ADDL.SESSIONS COURT-II, KOZHIKODE
ST.1603/2005 of SPECIAL JFCM(MARAD CASES), KOZHIKODE

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REVN. PETITIONER: APPELLANTS/ACCUSED

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1. VAZHAYIL MUHAMMED ASLAM, S/O.USMAN,
   THIRUVANNUR, MAMKOTTIL HOUSE, KOZHIKODE
   DISTRICT.

2. VAZHAYIL TRADERS, MERCHANTS &
   COMMISSION AGENT, BIG BAZAR, CALICUT,
   REPRESENTED BY MANAGING PARTNER,
   GAZHAYIL MUHAMMED ASLAM.

BY ADV. SRI.P.M.MOHAMED ALI
SRI.AYPE JOSEPH

RESPONDENTS: RESPONDENTS/COMPLAINANT & STATE

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1. K.P.MANI, S/O.KAMALADASAN NAIR,
   MATTANARI PARAMBA, PALAT NAGAR,
   THIRUVANNUR, KOZHIKODE.

2. STATE OF KERALA,
   REPRESENTED BY THE PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 02/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl.R.P. No. 2549 OF 2007

Dated this the 2nd day of July, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioners who were the accused in S.T. No.603/2005 on the file of the Special J.F.C.M.(Marad cases), Kozhikode challenge the conviction entered and the sentence passed against them for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioners and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioners re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the appellants in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause

(b) of the proviso to Section 138 of the Act and that the Revision Petitioners/accused failed to make the payment within 15 days of receipt of the statutory notice. Both the courts have considered and rejected the defence set up by the revision petitioners while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioners.

4. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioners.

5. I am, however, inclined to modify the sentence imposed on the appellants provided they comply with the condition hereinafter mentioned. Accordingly, if the 1st revision petitioner pays to the 1st respondent complainant by way of compensation under section 357(3) Cr.P.C. a sum of Rs.60,000/- (Rupees sixty thousand only) within three months from today and the 2nd revision petitioner remits the fine amount of Rs.1,000/- (Rupees one thousand only) within one month from today, then the 1st revision

petitioner need to undergo only imprisonment till the rising of the court. If on the other hand, the revision petitioners commit default in making the payment as aforesaid, the sentence imposed on them by the lower appellate court shall revive. Money, if any, paid by the revision petitioners pursuant to the orders, if any, passed by the lower appellate court shall be refunded to the revision petitioners.

This Revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

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